

1
2
3
4
5
6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**

8 BRIAN KERRY O'KEEFE,

9 No. 3:14-cv-00477-RCJ-VPC

10 *Petitioner,*

11 vs.

12 ORDER

13 ROBERT LEGRAND,

14 *Respondent.*

15 This habeas action brought by a Nevada state inmate comes before the Court for initial review
16 of the papers presented.

17 First, petitioner Brian Kerry O'Keefe has filed an application to proceed *in forma pauperis* along
18 with his petition for a writ of habeas corpus. Based on the current information about petitioner's
19 financial status, including any additional information he may have provided, the Court finds that he is
20 able to pay the full fee pursuant to 28 U.S.C. § 1915.

21 Second, petitioner did not use the required petition form. Under LSR 3-1 of the local rules,
22 petitioner must file a habeas petition on the Court's required § 2254 petition form. Petitioner instead
23 used a § 2241 petition form. While petitioner complains the state lacked jurisdiction to proceed with
24 his third trial, the determination of whether a petitioner must proceed under 28 U.S.C. § 2254 is a status
25 inquiry directed to the source of the petitioner's custody rather than the target of his challenge. *See, e.g.,*
26 *Shelby v. Bartlett*, 391 F.3d 1061, 1063-64 (9th Cir. 2004). Petitioner is in custody pursuant to a
27 Nevada state conviction. He therefore must proceed under § 2254, and he accordingly must use the
28 Court's required § 2254 form as required by LSR 3-1.

1 **IT IS THEREFORE ORDERED** that petitioner's application to proceed *in forma pauperis*
2 without having to prepay the full filing fee (docket #1) is **DENIED**. Petitioner shall have **thirty (30)**
3 **days** from the date this order in which to have the designated fee sent to the Clerk. Failure to do so may
4 result in the dismissal of this action.

5 **IT IS FURTHER ORDERED** that, within **thirty (30) days** of the date of this order, petitioner
6 **SHALL FILE** a new petition on the § 2254 habeas petition form. Failure to do so may result in the
7 dismissal of this action.

8 **IT IS FURTHER ORDERED** that the Clerk of Court shall SEND petitioner two copies each
9 of a § 2254 habeas petition form, along with one copy of the instructions for the form and of the papers
10 he submitted at docket #1-1.

11

12

DATED: October 29, 2014.

13

14

15

16

17

18

19

20

21

22

23

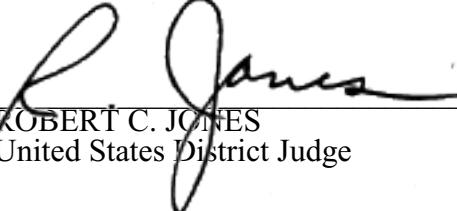
24

25

26

27

28


ROBERT C. JONES
United States District Judge